3-6029-20853-3

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF ALBERTVILLE

In the Matter of the Relocation Benefits Claim of Hoey Outdoor Advertising, Inc.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-entitled matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy at 9:30 a.m. on November 5-6, 2009, at the Office of Administrative Hearings, 600 Robert Street North, St. Paul, Minnesota. The OAH record closed on December 2, 2009, upon receipt of the parties' post-hearing reply memoranda.

Marc J. Manderscheid, Esq., Briggs and Morgan, appeared for Hoey Outdoor Advertising, Inc. (Claimant). Michael C. Couri, Couri, Macarthur & Ruppe, PLLP, appeared for the City of Albertville (City).

This order is the final administrative decision.[1] Judicial review of this decision may be had by appeal to the Minnesota Court of Appeals by writ of certiorari.[2]

STATEMENT OF ISSUES

What amount of relocation benefits is the Claimant entitled to receive for the relocation of an outdoor advertising sign under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 *et seq*., and 49 C.F.R. § 24.301?

The Administrative Law Judge concludes that the Claimant is entitled to moving expenses in the amount of $78,242.89, offset by the salvage value or sale proceeds of the I-beams placed in storage and by whatever sums the City has already paid it in advance of the hearing.

Based upon all of the proceedings in this matter, the Administrative Law Judge makes the following:

[1] Minn. Stat. § 14.62, subd. 4 (2008).
[2] *See Naegele Outdoor Advertising, Inc. v. Minneapolis Community Development Agency*, 551 N.W.2d 235 (Minn. App. 1996).

FINDINGS OF FACT

1. Diane Schubert Hoey is the owner of Hoey Outdoor Advertising, Inc. (Hoey or Claimant). The business finds locations, builds and maintains the billboards, and sells the advertising that is placed on the billboards. Hoey owns between 250 and 300 billboards, about half of which are located in Minnesota.[3]

2. In March 1998, Hoey purchased from Franklin Outdoor Advertising an existing billboard adjacent to I-94 and County State Aid Highway 19 in Albertville, Minnesota. The billboard was a V-type structure consisting of two 14 by 48-ft panels positioned in a "V" shape and supported by seven steel I-beams (three under each panel and one at the bottom of the "V" where the panels meet), which were set into concrete footings in the ground. The billboard's height was 30 feet above ground level and 993.32 feet above sea level. One panel was visible to east-bound traffic, and the other panel was visible to west-bound traffic.[4] The billboard was a legal conforming use in compliance with all applicable laws and ordinances.[5]

3. The property on which the billboard stood was a parcel of approximately 4.6 acres owned by Gerhard Knechtl, a resident of Vienna, Austria.[6] The property was then and remains now a cornfield located north of the highway between I-94 and the Albertville Outlet Mall.[7] In October 1998, Hoey entered into a lease with Knechtl that ran through September 30, 2008. Under the lease, Hoey had the right to place and maintain outdoor advertising signs and related equipment on the premises. The lease specifically provided that "[a]ll structures, equipment and materials placed upon the [p]remises by the Lessee shall not be deemed a fixture and shall always remain the property of and may be removed by the Lessee at any time prior to or within a reasonable time after the termination of the lease or any extensions thereof."[8]

4. In 2005, the City received approval to obtain $800,000 in Federal High Priority Transportation Earmark Funds for the purpose of acquiring right-of-way to build an exit ramp off of I-94 at County Road 19, so that persons driving west-bound on the highway would be able to exit the highway closer to the mall. The proposed ramp was to be located on 1.3 acres of Knechtl's property, in the area immediately adjacent to the highway. The Hoey billboard was located in the area proposed for the exit ramp.[9]

5. The plan to build the new exit ramp created interest by retail developers in the remainder of Knechtl's property. Specifically, the Collyard

[3] Testimony of Diane Hoey.
[4] Test. of D. Hoey; Ex. 7 (permit application).
[5] Ex. 28.
[6] Ex. 102.
[7] Ex. 8.
[8] Test. of D. Hoey; Ex. 102.
[9] Ex. 20 at 9 of 10.

Group expressed interest in purchasing the rest of Knechtl's property for the purpose of building a Tires Plus building and parking lot.[10] Knechtl discussed offering his property for sale to the Collyard Group in a variety of ways, including the possibility that Knechtl would retain ownership of a small strip of land, about 76 by 61 feet, on which the billboard would be relocated. If the sale were structured in that fashion, cross easements for access to the sign and for parking under the sign would have been required.[11] The new location, however, would be about 18 inches lower in elevation than the existing elevation of the billboard. In addition, the Collyard Group indicated that it would have to grade the property six to seven feet lower, to the level of County Road 19. To achieve the same visibility from the highway, the billboard would have to be higher than the 30-foot limit set by City ordinance.

6. By October 2005, the City had met with Knechtl more than once and had determined that he was willing to sell the property to the City for construction of the ramp.[12] The Albertville City Council voted to contract with Short Elliott Hendrickson (SEH) to negotiate the terms of the purchase agreement with Knechtl and to purchase or relocate the billboard.[13]

7. In the fall of 2005, Diane Hoey met with Allan Brixius (the City's planning consultant) and Marv Martin of SEH. Martin advised Hoey that the City was having some difficulty negotiating a price with Knechtl, but that if the City were successful in buying the property, the billboard would have to be moved. He indicated that there were many pieces to the process, including environmental studies, and that it would take some time to finalize the project. He discussed obtaining an appraisal of the sign.[14]

8. It is unclear whether the City ever executed any contract with SEH after the resolution approving such an agreement. In any event, SEH did not negotiate the purchase of the property from Knechtl or provide relocation services to Hoey on behalf of the City. From the fall of 2005 forward, the City Administrator, the City Attorney, and the City's planning consultant acted on behalf of the City to negotiate the purchase of the property and relocate the billboard.[15] Hoey received no notices regarding her eligibility for relocation benefits, and she received no relocation assistance services.[16] No appraisal of the billboard was ever performed.[17]

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[10] Test. of D. Hoey.
[11] Ex. 11.
[12] Ex. 31; Ex. 20.
[13] Ex. 20 & Attachment (Scope of Services).
[14] Test. of D. Hoey.
[15] *See, e.g.*, Testimony of Larry Kruse; Test. of D. Hoey.
[16] Test. of D. Hoey.
[17] Test. of L. Kruse.

9. The City evaluated Hoey's billboard and found it to be approximately 15 years old and in good condition.[18]

10. In January 2006, the City obtained an estimate from Scenic Sign Corp. to remove the existing billboard and re-install it at a new location. The estimate—$22,150—was based on the assumption that the seven I-beams could be cut off at ground level and re-installed at the new location, with 10-foot extensions welded at the top. The panels would then be re-installed on the structure. The quote does not include electrical work necessary to move and re-install utility service.[19] The bidder for Scenic Sign was not familiar with the International Building Code requirements for billboards (wind speed and exposure tolerance) and had not consulted an engineer about whether this structure would comply with the Building Code.[20] The bid was time-limited and expired if not accepted within 30 days.[21]

11. The City used the estimate of $22,150 to "back into" a valuation of $.50 per square foot for the property subject to Hoey's lease. The negotiations with Knechtl were similarly based on a proposed price per square foot (beginning at about $10.50, the appraised value). The City Administrator advised Hoey that the City would be willing to pay her $22,150 in relocation benefits and that she would be responsible for moving the sign. Diane Hoey indicated that she was interested in installing a new monopole sign on Knechtl's remaining property adjacent to the exit ramp and that she was attempting to obtain some lease concessions from Knechtl with regard to the term of the lease that would make this investment feasible. The City Administrator indicated to Hoey that the City did not wish to be involved in lease discussions between Hoey and Knechtl.[22]

12. A monopole structure is more expensive to build than an I-beam structure, but it requires less space on the ground because it uses one central pole instead of multiple I-beams set into concrete footings. While the I-beam structure would take up eight to ten spaces in any parking lot built on the site, a monopole structure would require only one space.[23]

13. On February 13, 2006, the City Administrator forwarded a draft purchase agreement to Knechtl. The draft agreement, to be executed by the City and Knechtl, called for a total purchase price of $601,325 for the property. The draft agreement was subject to the following contingency:

> Execution of an agreement between [the City] and Hoey Outdoor Advertising, Inc. under which [the City] would acquire the right to remove Hoey Outdoor Advertising, Inc.'s billboard sign located on

[18] Ex. 101.
[19] Ex. 100; Testimony of John DeZurik.
[20] *Id*.
[21] *Id*.
[22] Ex. 101.
[23] Testimony of Michael Hylandsson.

> the Property within six months of the date of this Agreement for consideration not to exceed $22,150 plus professional fees and permits not to exceed $1,903 for a total not to exceed amount of $24,053. If in the event the total cost to move the sign is less than $24,053, the difference would be paid to Mr. Knechtl.[24]

14. In the cover letter forwarding this draft agreement to Mr. Knechtl, the City Administrator advised him that the City "will guarantee the total cost to move the billboard will not exceed the $.50 per sf or $24,053 we discussed. If it is less, we will make sure that money goes to you."[25]

15. In April 2006, Hoey obtained a quote from Productivity Fabricators, Inc., for a center-mount (monopole) billboard structure in the amount of $27,620.[26] This structure was sized to support the existing sign faces (14 by 48 feet). The quote did not include the cost of installing the structure.

16. On April 24, 2006, the City Council approved the proposed purchase agreement described above. City staff indicated that it would work with Hoey to verify the need for a variance to raise the height of the billboard from 30 to 40 feet above ground.[27]

17. On May 1, 2006, Diane Hoey met with the City Administrator, the City's planning consultant, and Mr. Knechtl. In the meeting, the City advised Hoey of the various setback requirements for the relocated billboard in the southwest corner of Knechtl's remaining property. In addition, the City indicated that it "want[ed] a flag unipole" structure to be used in order to accommodate future development of the property. The City indicated it would take approximately one year to engineer and design the ramp.[28]

18. Both Hoey and Knechtl left this meeting with the understanding that it likely would be necessary to make the area beneath the billboard available to any potential developer, either for parking or for construction of a building, as this area was immediately adjacent to County Road 19.[29] Later, Hoey and Knechtl discussed the possibility that Knechtl would retain ownership of a smaller strip of land than originally contemplated, perhaps ten feet by ten feet, which, in addition to the cross easements for access and parking, would also require an easement allowing the billboard to overhang the proposed Tires Plus building.[30]

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[24] Ex. 21, Attached Commercial Purchase Agreement ¶ 9 B.
[25] Ex. 21.
[26] Ex. 9.
[27] Ex. 24.
[28] Ex. 10; Test. of D. Hoey.
[29] Exs. 10 & 11.
[30] Ex. 12.

19. In February 2007, the City circulated a draft three-party agreement between the City, Knechtl, and Hoey. The City Attorney also requested a copy of the existing lease between Knechtl and Hoey.[31]

20. In July 2007, the City approved a height variance allowing Hoey to maintain the height of the billboard at 993.32 feet above sea level in the new location.[32]

21. In August 2007, Hoey submitted applications to the City for a building permit and sign permit to remove the existing structure and to build a new one further north on Knechtl's property. Hoey estimated the job cost at $50,000. Attached to the application was a drawing of the new billboard structure, a center-mount monopole sized to accommodate the existing sign faces.[33]

22. On August 30, 2007, the City Attorney reviewed the existing lease between Knechtl and Hoey and discovered that it would expire by its own terms in September 2008.[34]

23. On September 2, 2007, Knechtl proposed to the City that he sell the land required for the ramp for $625,404 and that he also retain the $22,150 designated as Hoey's relocation benefit. He proposed that the City allow the billboard to remain in the existing location until the lease expired, "and only after the termination of said contract a new contract . . . will be signed between Diane and me." He believed that after expiration of the lease, Hoey would be obligated to remove the sign at her own expense.[35]

24. The City agreed to this proposed course of action.[36] On October 23, 2007, the City and Knechtl executed a Commercial Purchase Agreement. Under the Agreement, the City granted a license to Knechtl to continue to operate as the landlord and to receive rent payable from Hoey through the expiration of the lease in September 2008. Knechtl was obligated to require Hoey to remove the sign from the property by November 30, 2008.[37] The total purchase price was $625,378.

25. The Agreement also required the City to pay to Knechtl $22,150 as relocation compensation "in recognition of the possibility that Seller may choose to relocate the existing billboard sign located on the property to Seller's remaining property prior to the termination of the existing lease for said billboard."[38] The Agreement obligated Knechtl to execute an Affidavit

[31] Ex. 27.
[32] Ex. 110; Ex. 28.
[33] Exs. 13 & 14.
[34] Ex. 34 (City Attorney's bill for reviewing lease).
[35] Ex. 30.
[36] Ex. 30; Ex. 29.
[37] Ex. 102.
[38] *Id*. ¶ 2b.

acknowledging receipt of Notice of Relocation Eligibility, the form of which was attached as Exhibit B.[39] Knechtl did not execute the affidavit. The Agreement further provided:

> Seller has received a notice of its eligibility for relocation benefits pursuant to Minn. Stat. 117.52 and has satisfied itself, after due inquiry, that the $22,150.00 in relocation assistance is a fair and accurate estimate of all . . . relocation costs arising from the acquisition of the Property by the City, including the costs of relocating the existing billboard sign from the Property to another acceptable location on Seller's remaining land upon the expiration of the Lease if Seller so chooses. Seller understands that Seller may be eligible for relocation benefits under Minnesota State Statute § 117.52, including payment of moving expenses, replacement property search fees not to exceed $2,500.00, costs to connect to nearby utilities, selected professional fees related to the lease of a replacement site, reestablishment expenses not to exceed $50,000.00, and relocation advisory assistance services provided by the Buyer. Seller, with full understanding of the potential relocation benefits available to it, and being represented by counsel, hereby agrees that the $22,150.00 in relocation benefits set out herein is a fair estimate of all of the eligible relocation costs that may be incurred by Seller in moving the existing billboard sign from the Property onto Seller's remaining property, and Seller accepts this amount in full settlement of relocation benefits available to it.[40]

26. The City provided Hoey with no advance notice that it intended to remove her from the three-way agreement previously negotiated or that it intended to pay to Knechtl the funds previously designated for Hoey's relocation assistance benefits. On the day this agreement was executed, the City advised Hoey by letter that it had acquired the property, that Knechtl would continue to act as landlord under the lease, and that Hoey should continue to pay rent to Knechtl in Austria. The letter further advised Hoey to remove the billboard by November 30, 2008.[41]

27. After the lease expired, the City took the position that Hoey was not a displaced person and was not entitled to relocation benefits because the lease had expired by its own terms.[42]

28. Neither the Collyard Group nor any other developer purchased Knechtl's remaining property. The property is still for sale.[43]

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[39] *Id*. ¶ 4a(3).
[40] *Id*. ¶ 8d.
[41] Ex. 107.
[42] Ex. 108.

29. In August 2008, Hoey obtained a bid from Scenic Sign to remove the existing billboard and reinstall it as a V-type structure about 100 feet away using new steel I-beams, in lieu of using the old beams and welding extensions to the top.[44] That bid, in the amount of $36,419.00, included electrical work necessary to illuminate the sign. The bid assumes the new sign height would be the same as the old sign—30 feet.[45]

30. Hoey also obtained an updated bid from Productivity Fabricators, Inc., for a center-mount monopole structure in the amount of $41,900.00, including shipping. The revised bid includes the same components as did the bid obtained in 2006 in the amount of $27,620. The difference is attributable to the increased cost of steel and transportation.[46]

31. After the original lease expired, Hoey successfully negotiated a new lease with Knechtl for the anticipated location in the southwest corner of his remaining property. The new lease does not explicitly require Hoey to use any particular type of structure for the billboard. Hoey did not obtain any concessions from Knechtl regarding the lease term or the amount of rent.[47]

32. In November 2008, Hoey removed the old sign and installed a new monopole structure obtained from Productivity Fabricators. The original sign panels, ratchets, and lights were re-installed on the new structure.[48] The old I-beams were placed in storage. The new structure height accounts for the lower elevation, and it was placed with extra-deep footings to address the potential need to grade the site to the level of County Road 19.[49] This was a complicated move requiring the use of cranes, rigging, an augur truck, and the pouring of concrete footings. City building inspectors approved the new structure as in compliance with the International Building Code.[50]

33. The use of a monopole structure was not required by City ordinance.[51]

34. The use of a monopole structure for the billboard does not translate into higher advertising rates. The only benefit to Hoey of changing to a monopole structure is that it increases the likelihood that the sign will be able to remain in place if the property is sold in the future for retail development.[52]

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[43] Test. of M. Hylandsson.
[44] Ex. 16; Test. of J. DeZurik.
[45] Test. of J. DeZurik.
[46] Test. of M. Hylandsson.
[47] *Id*.
[48] Ex. 19: Test. of M. Hylandsson.
[49] Test. of M. Hylandsson.
[50] Ex. 109; Test. of John Sutherland.
[51] Test. of L. Kruse.
[52] Test. of M. Hylandsson.

35. On February 5, 2009, Hoey submitted a claim for relocation benefits to the City as follows:

Building permit	$ 1,149.89
Removal of old sign	$ 4,025.00[53]
Replacement structure	$41,900.00
Assembly of structure	$22,800.00[54]
Electrical work	$ 4,555.00
Reinstall advertisement	$ 513.00
Supervision fee	$ 7,494.00
Survey	$ 800.00[55]
Total	$83,238.02

36. Hoey submitted receipts documenting that the above costs, except for the claimed supervision fee, were actually incurred and paid for the purpose of moving the billboard.[56] The supervision fee was calculated as 10% of the total cost of the move.[57]

37. After receipt of Hoey's claim, the Minnesota Department of Transportation advised the City that Hoey must be considered a displaced person under the Uniform Relocation Act because the billboard was moved as a direct result of the City's acquisition of property for a federal highway project.[58]

38. In September 2009, the City Council paid Hoey approximately $24,143.50, based on the City's 2006 estimate of the cost to move the sign ($22,150), adjusted for inflation.[59]

39. Hoey appealed the City's denial of the remainder of the claim for relocation assistance.

40. On September 30, 2009, the City issued a Notice and Order for Hearing.

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[53] Hoey deducted $600 from the cost of removing the old sign as an allowance for the salvage value of parts that were scrapped (steel poles and stringers) when the billboard was reinstalled. *See* Test. of M. Hylandsson.

[54] The structure was assembled by Schmieg-Washburn Industries, a company Hoey had used in the past for similar work. In October 2008, Scenic Sign provided a quote to Hoey in the amount of $20,875 to assemble the structure; Hoey did not use Scenic Sign, however, because it had not worked with the company in the past. Test. of M. Hylandsson.

[55] Ex. 1. The cost of the survey to determine the height of the sign was inadvertently omitted from the original claim. During the hearing, Hoey indicated that the $800 cost of the survey should be added to the previously submitted claim.

[56] Ex. 17.

[57] Test. of M. Hylandsson.

[58] Test. of L. Kruse. The parties agree that the federal URA is applicable to this claim because federal, not state, funds were used to acquire Knechtl's property.

[59] Ex. 108; Test. of L. Kruse.

41. The exit ramp has not yet been constructed because of a shortfall in funding. The project is in the final design stages, and the City would like to start construction in the spring of 2010.[60]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction to hear and decide this matter pursuant to Minn. Stat. § 117.52, subd. 4 (2008).

2. The Claimant received timely and appropriate notice of the hearing.

3. The Claimant has the burden of proof to demonstrate entitlement to relocation benefits.[61]

4. The purpose of the federal relocation assistance program is, in part, to insure that persons displaced as a direct result of federally assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.[62]

5. Any person who moves personal property from real property as a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of such real property in whole or in part for a federally assisted project, is a displaced person.[63]

6. The Claimant is a displaced person under the Uniform Relocation Act.

7. A displacing agency must provide a program of relocation assistance advisory services, which shall include such measures, facilities, and services as may be necessary or appropriate in order to determine the relocation needs and preferences of each business to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance.[64] The advisory program shall also include the provision of current and continuing information on the availability and rental costs of suitable locations, as well as assistance to obtain and become established in a suitable replacement location.[65] The program must include services necessary and

[60] Test. of L. Kruse.
[61] Minn. R. 1400.7300, subp. 5 (2007).
[62] 42 U.S.C. § 4621(b); 49 C.F.R. § 24.1(b).
[63] 49 C.F.R. § 24.2(a)(9)(i)(A).
[64] 49 C.F.R. § 24.205(c)(2)(i).
[65] 49 C.F.R. § 24.205(c)(2)(iii).

appropriate to minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.[66]

8. The City failed to provide any relocation assistance advisory services to the Claimant.

9. A tenant who is displaced from a business is entitled to payment of actual reasonable and necessary moving and related expenses.[67]

10. The term business means, among other things, any lawful activity that is conducted primarily for outdoor display purposes, when the display must be moved as a result of a federally assisted project.[68]

11. The Claimant's advertising sign meets the definition of a business under the Uniform Relocation Act.

12. Personal property from a business may be moved by one or a combination of the following methods: (1) a commercial move, based on the lower of two bids or estimates prepared by a commercial mover; or (2) a self-move. A self-move payment may be based on one or a combination of the following: (i) the lower of two bids or estimates prepared by a commercial mover or qualified Agency staff person; or (ii) supported by receipted bills for labor and equipment.[69]

13. The Claimant was entitled to choose a self-move and to seek payment based on receipted bills for labor and equipment. The Claimant was not obligated to accept the City's estimated cost of a commercial move.

14. Eligible actual moving expenses include disconnecting, dismantling, removing, reassembling, and reinstalling relocated personal property. For a business, this includes equipment, substitute personal property, and connections to utilities; it also includes modifications to the personal property, including those mandated by Federal, State or local law, code, or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.[70]

15. The Claimant is entitled to recover the cost of removing the old sign ($4,025), electrical work ($4,555), reinstallation of the flex ($513), and the survey ($800) as eligible moving expenses pursuant to 49 C.F.R. § 24.301(g)(3).

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[66] 49 C.F.R. § 24.205(c)(2)(iv).
[67] 42 U.S.C. § 4622; 49 C.F.R. § 24.301(a)(1).
[68] 49 C.F.R. § 24.2(a)(4)(iii); *see also* 42 C.F.R. § 4601(7)(D).
[69] 49 C.F.R. § 24.301(d)(1) & (2).
[70] 49 C.F.R. § 24.301(g)(3).

16. If an item of personal property, which is used as part of a business or farm operation, is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of: (i) the cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or (ii) the estimated cost of moving and reinstalling the replaced item, but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.[71]

17. The Claimant is entitled to recover the cost of the replacement structure ($41,900) and the cost of assembling the replacement structure ($22,800) as substitute personal property pursuant to 49 C.F.R. §§ 24.301(g)(3) and (g)(16); the Claimant must, however, offset from these sums the salvage value or sale proceeds of the I-beams placed in storage.

18. Eligible actual moving expenses also include the cost of permits required at the replacement location, and actual reasonable and necessary professional services for planning the move, moving the personal property, and installing the relocated personal property at the replacement location.[72]

19. The Claimant is entitled to the cost of the building and sign permits ($1,149.89) pursuant to 49 C.F.R. § 24.301(g)(11).

20. A business is also entitled to reimbursement for actual expenses, not to exceed $2,500, which are incurred in searching for a replacement location, including time spent in obtaining permits and attending zoning hearings, and time spent negotiating the purchase of a replacement site.[73]

21. The Claimant is entitled to recover $2,500 for expenses incurred in searching for a replacement location, obtaining permits, attending zoning hearings, and negotiating the lease of the replacement site.

22. Any claim for relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses.[74]

23. The Claimant has not adequately documented the claim for planning and supervisory expenses in excess of $2,500.

24. The Claimant is entitled to total moving expenses in the amount of $78,242.89, offset by the salvage value or sale proceeds of the I-beams placed

[71] 49 C.F.R. § 24.301(g)(16).
[72] 49 C.F.R. § 24.301(g)(11) & (12).
[73] 49 C.F.R. § 24.301(g)(17).
[74] 49 C.F.R. § 24.207(a).

in storage and by whatever sums the City has already paid it in advance of the hearing.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that the claim for moving expenses in the amount of $78,242.89, less the salvage value or sale proceeds of the I-beams placed in storage, is APPROVED. The City shall reimburse the Claimant for all sums owed within 30 days.

Dated: January 4, 2010

/s/ Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally Recorded, no transcript prepared.

MEMORANDUM

The City's main argument is that the Claimant is not entitled to actual moving expenses associated with relocating the sign but is limited by 49 C.F.R. § 24.301(f) to payment for the "direct loss" of an advertising sign, determined as the lower of the depreciated reproduction cost of the sign, as determined by the agency, less the proceeds from its sale; or (2) the estimated cost of moving the sign. The City provided testimony from a representative of the Minnesota Department of Transportation to the effect that the Department views this provision as applicable to most if not all billboards.[75] The Claimant, on the other hand, contends that the billboard is a "business" as defined under the URA and that it is entitled to the same moving and other related expenses that other business owners are entitled to under the Act.

The Federal Highway Administration (FHA) is the federal agency that has been delegated the responsibility to administer the Uniform Relocation Assistance and Real Property Acquisition Act (Uniform Relocation Act). According to the FHA, the definition of an outdoor advertising display as a "business" under 42 U.S.C. § 4601(7)(D) [section 101(7)(D) of the Uniform Act] "makes it clear that some, if not all, signowners should be entitled to moving and related expenses" under the Uniform Act. In addition, the FHA has specifically stated, in the context of adopting the implementing regulations, that this statutory

[75] Testimony of Greg Thompson.

language was added to the Act in 1987 specifically to broaden the relocation benefits available to signowners.[76]

As noted above, the Act and implementing regulations expressly define a business as any lawful activity that is conducted primarily for outdoor display purposes, when the display must be moved as a result of a federally assisted project.[77] Under 49 C.F.R. §§ 24.301(d), a business that is being relocated is entitled to either a commercial move or self move, and it is eligible to obtain reimbursement for the moving expenses described in 301(g)(1) through (g)(7) and (g)(11) through (g)(18). The Administrative Law Judge concludes that this claim for relocation benefits is properly analyzed under 49 C.F.R. §§ 24.301(d) and (g). Although the direct-loss provision contained in 49 C.F.R. § 24.301(f) might well be applicable to some claims involving billboards, it does not limit the Claimant in the manner contended by the City.

Moreover, it would be difficult to apply 49 C.F.R. § 24.301(f) on this record. The Department of Transportation representative acknowledged that in most cases in his experience, billboards handled under 49 C.F.R. § 24.301(f) were considered a direct loss because they were obsolete, did not comply with zoning requirements, or could not for other reasons be moved and relocated.[78] Here, the parties agree that the billboard in question was in good condition; it was a legal conforming use in compliance with all ordinances and codes at the displacement site and the replacement site; and it was in fact moved by the Claimant to a new site. The City did not buy or remove the billboard, and the Claimant did not suffer a "direct loss" of the property. Nor is there any logical way to apply the regulation, which calls for a comparison of the depreciated reproduction cost of the sign, less the proceeds from its sale (a number that is not in the record), with the estimated cost of moving the sign.[79]

The Administrative Law Judge believes the more significant issue is whether the Claimant is entitled to recover the expense associated with replacing the I-beam structure of the sign with a center-mount monopole structure at the replacement location. The Claimant maintains that the replacement structure is "substitute personal property," which is an eligible moving expense under 49 C.F.R. § 24.301(g)(3). If an item of personal property used as part of a business is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of (i) the cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the

[76] 54 Fed. Reg. 8912, 8920 (Mar. 2, 1989). Even before enactment of the URA, the Federal-Aid Highway Act of 1968, at 23 U.S.C. § 505(a), required compensation for actual reasonable expenses incurred in moving outdoor advertising display structures from real property. *See Whitman v. State Highway Comm'n of Missouri*, 400 F. Supp. 1050, 1078-79 (W.D. Mo. 1975).
[77] 42 U.S.C. § 4601(7)(D); 49 C.F.R. § 24.2(a)(4)(iii).
[78] *See also* Test. of D. Wilson.
[79] The City's attorney, prior to the hearing, advised the City Council that the direct loss provision was not applicable to this claim. *See* Ex. 108.

replaced item; or (ii) the estimated cost of moving and reinstalling the replaced item, but with no allowance for storage.[80]

The regulation thus calls for a comparison of the cost of the substitute item, minus any proceeds from the sale or trade of the replaced item, with the estimated cost of moving and reinstalling the replaced item. The Claimant has established that the I-beam structure was not moved but was replaced with a substitute item (a monopole structure) that performs a comparable function at the displacement site. The sign panels, lights, ratchets, and advertising flex (the actual advertisement displayed on the sign) were all moved and hung on the new structure.

The Claimant has also established the cost of the substitute structure: $41,900 plus the $22,800 installation cost. The Claimant has offset $600 of the claimed expense for removing the old sign with the salvage value of some parts that were not re-used (the steel poles and stringers), and the City has not disputed the salvage value of these parts. The Claimant did not, however, salvage the old steel I-beams; the record reflects that those were put into storage. To properly recover for the purchase of substitute personal property, the Claimant must sell or determine the salvage value for the I-beams and further offset the claimed costs by this amount. Although this is a matter that should have been addressed prior to submitting the claim, it is an understandable misstep given that the Claimant received no counseling from the City as to the necessary steps for submission of the claim. It will not prejudice the City to permit this step to be taken now. If there is a dispute as to the appropriate salvage value, the record can be re-opened to address it.[81]

The City contends that the comparison point—the estimated cost of moving and reinstalling the replaced item—is established by its initially estimated cost to move ($22,150), adjusted for inflation (by adding $1,769), plus the cost of electrical work and building permits (for a total of $29,568.89). There are several problems with this argument. First, when payments for substitute property are to be based on estimates of the cost to move, the regulations require *two* bids or estimates, except that the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.[82] This was an expensive and complicated move.[83] Two bids are required under § 24.301(g)(16) in order to limit the payment to something lower than the Claimant's actual cost, and only one bid is in the record.

Second, the record reflects that the City's moving estimate is unreliable. Steel prices have increased substantially since 2006; the estimate from Scenic

[80] 49 C.F.R. § 24.301(g)(16).
[81] The parties should advise the Administrative Law Judge within 30 days if there is a dispute as to the salvage value of the I-beams.
[82] 49 C.F.R. §§ 24.301(d)(i) & (g)(16)(ii). *See also* Test. of D. Wilson; Test. of G. Thompson.
[83] Test. of D. Wilson; Test. of G. Thompson.

Sign had to be accepted within 30 days. Moreover, there is no evidence that the proposal to weld extensions onto the old I-beams would be sufficient to withstand 90 m.p.h. wind gusts, as required by the International Building Code. The record reflects that Scenic's estimator had no knowledge of the Code's requirements and had not reviewed the bid with an engineer. Finally, the estimate does not address the Claimant's need to adjust the footing depth to account for the potential grading of the site in the event that it is developed.

The Claimant did obtain a bid in 2008 to remove the old sign and to build a similar structure using new steel I-beams. This estimate, however, also involves the use of a substitute structure for the sign. There is only one estimate in the record of the cost to move the billboard, and for the reasons stated above, the Administrative Law Judge concludes that it is not a reliable basis for reducing the claimed cost of the substitute structure. Under the circumstances, the Claimant has established that it is entitled to payment for the cost of the substitute structure, offset by the salvage value or sale proceeds for the I-beams.

Finally, the Claimant maintains it is entitled to $7,494 as a supervision fee. It argues this expense is justified because it acted as its own general contractor and spent time submitting permit applications and attending the hearing on its variance request. The Claimant calculated the fee as 10% of the total cost of the move.

The Administrative Law Judge concludes that the Claimant included in this category many expenses that are subject to the $2,500 maximum payment for expenses incurred in searching for a replacement location, obtaining permits, attending zoning hearings, and negotiating the lease of the replacement site. The Claimant provided testimony that Michael Hylandsson spent about 15 work hours in connection with the survey and attending meetings to obtain the variance to the height restriction; he also said he spent about eight work hours putting together the permit applications. The Administrative Law Judge concludes that the Claimant has adequately supported a claim for the expenses that are subject to this $2,500 limit.

There is no evidence, however, as to the amount of time the Claimant spent planning and supervising the move. The Claimant has cited no authority for the proposition that a tenant, acting as a general contractor in planning a move, is entitled to a flat 10% fee for supervisory services. Based on the requirement to document these expenses, the Administrative Law Judge concludes the Claimant has failed to prove that it is entitled to the remainder of the claim for supervisory time ($4,994).

K.D.S.